



U.S. Department of Justice

Civil Rights Division

*Office of Special Counsel for Immigration-Related
Unfair Employment Practices - NYA
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BY EMAIL (lauren@rickgump.com)

Lauren Allen, Esq.
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Dear Ms. Allen:

Thank you for contacting the Office of Special Counsel for Immigration-Related Unfair Employment Practices ("OSC"). This is in response to your email to OSC, dated November 18, 2013. We apologize for the delay in our response. In your email, you ask whether, in the context of an internal Form I-9 audit, an employer may request the employment eligibility documentation presented at the time the Form I-9 was completed, if the copies of the documentation "are unclear and prevent [the] forensic evaluation of their genuineness." You explain that "the employer may have a significant need to ensure an authorized workforce in a sale to another company or to avoid losing valued employees in an ICE audit." In addition, you ask whether the employer may, in the alternative, request current employment authorization documentation if the documentation presented at the time the Form I-9 was completed is no longer available.

OSC enforces the anti-discrimination provision of the Immigration and Nationality Act ("INA"), as amended, 8 U.S.C. § 1324b. The anti-discrimination provision prohibits citizenship or immigration status discrimination, national origin discrimination, unfair documentary practices ("document abuse") during the employment eligibility verification (Form I-9 and E-Verify) processes, and retaliation for filing a charge or asserting rights under the anti-discrimination provision. More information on OSC can be found on our website: www.justice.gov/crt/about/osc. Although OSC cannot give you an advisory opinion on any set of facts involving a particular individual or company, we are able to provide some general guidelines regarding compliance with the anti-discrimination provision of the INA, 8 U.S.C. § 1324b.

While not required by law, an employer may conduct an internal audit of Forms I-9 to ensure ongoing compliance with the employer sanctions provision of the INA. Internal audits should not be conducted because of employees' citizenship status or national origin, or in retaliation for exercising their rights under 8 U.S.C. § 1324b. Moreover, employers must apply consistent standards when reviewing Forms I-9 for deficiencies, regardless of the citizenship status or national origin of the employee. As a threshold matter, the standard for reviewing Form

I-9 documentation during an internal audit does not change from the standard applied during the initial employment eligibility verification process; an employer is required to accept Form I-9 documentation that reasonably appears to be genuine and to relate to the individual presenting the documentation. We note that this standard does not require an employer to utilize forensic techniques, and that different levels of scrutiny based on the type of document or the citizenship status or national origin of the employee may violate the anti-discrimination provision. Further, as employers are not required to photocopy I-9 documentation (except for certain documents when an employer uses E-Verify), an employer should not conclude, solely based on unclear photocopies of Form I-9 documentation, that an employee's Form I-9 documentation is not genuine or does not relate to the individual. Put differently, an employer should not request to see originally-presented documents or alternative documents solely because photocopies are unclear or where documents originally-presented were not photocopied. Moreover, requesting such documents on the basis of citizenship status or national origin may violate the anti-discrimination provision of the INA.

We hope this information is helpful. If you have further questions, please contact our employer hotline at (800) 255-8155.

Sincerely,

A handwritten signature in blue ink that reads "for Alberto Ruisanchez". The signature is written in a cursive style.

Alberto Ruisanchez
Acting Deputy Special Counsel